

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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PATRICK BERGSRUD,

Plaintiff,

VS.

BANK OF AMERICA, N.A., *et al.*,

Defendants.

2:13-cv-00998-JCM-VCF

ORDER

Before the court is plaintiff's motion for leave to file declaration of plaintiff in support of reply in support of motion for FRCP 60(b) relief/motion for leave to amend complaint (#27). Defendants Ocwen Loan Servicing, LLC, erroneously named as Ocwen Financial Corporation, and Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing LP filed their opposition to plaintiff's motion for leave to file declaration of plaintiff in support of reply (#28). Defendant Saxon Mortgage Company filed its joinder to opposition to plaintiff's motion for leave to file declaration of plaintiff in support of reply (#29) on June 18, 2014. For the following reasons discussed below, plaintiff's motion for leave to file declaration of plaintiff in support of reply in support of motion for FRCP 60(b) relief/motion for leave to amend complaint (#27) is granted.

On February 19, 2014, the Honorable James C. Mahan granted defendants' motion to dismiss. (#22) This case is not closed, however, because Judge Mahan granted the dismissal without prejudice. Throughout his order, Judge Mahan identified elements of the various causes of action which were not supported by factual allegations. The dismissal without prejudice provided an opportunity to seek leave to file an amended complaint.

In his motion for relief from Judge Mahan's February 19th order (#23), plaintiff seeks, among other requests, leave to file an amended complaint, "so that the case can be heard on the merits." (#23 at

1 pp. 6 & 7). Defendants opposed this motion (#24) and plaintiff replied (#25). Twelve days after filing
2 his reply, plaintiff filed a motion (#27) requesting leave to add a further declaration in support of the
3 motion for relief from Judge Mahan's February 19th order. Defendant has opposed this motion (#28).

4 Given the posture of this case, all claims having been dismissed without prejudice, the parties not
5 having undertaken discovery, and there having been some confusion on the part of plaintiff's counsel,
6 which may or may not be excusable, the interests of justice are best served by allowing the supplemental
7 declaration. To the extent that the new declaration, filed as a part of document #27, raises new factual
8 issues which were not asserted in previous filings by plaintiff, defendants may file a response to that
9 declaration, limited to the new issues only. That response is due on or before July 8, 2014. Motion
10 (#23) will then be fully briefed and ready for decision by Judge Mahan.

11 Accordingly,

12 IT IS HEREBY ORDERED that plaintiff's motion for leave to file declaration of plaintiff in
13 support of reply in support of motion for FRCP 60(b) relief/motion for leave to amend complaint (#27)
14 is GRANTED.

15 IT IS FURTHER ORDERED that to the extent that the new declaration, filed as a part of
16 document #27, raises new factual issues which were not asserted in previous filings by plaintiff,
17 defendants may file a response by July 8, 2014, to that declaration, limited to the new issues only.

18 DATED this 24th day of June, 2014.



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20 CAM FERENBACH
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22 UNITED STATES MAGISTRATE JUDGE
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